

Chap Leg

OLC 78-1444/1

OLC 78- 1444/1

17 April 1978

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MEMORANDUM FOR: [REDACTED]

Retirement Branch
Office of Personnel

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FROM: [REDACTED]

Assistant Legislative Counsel

SUBJECT: Your Draft Memorandum from the Deputy Director for
Administration to the DCI on a Retirement
System Proposal

1. I have reviewed your draft memorandum and concur in the general thrust thereof. I do think, however, that to some extent the memorandum presents too bleak a picture of the congressional environment in which such a proposal as raised by the Director would be received.

2. I would suggest that the first sentence of the first full paragraph on page 2 of your draft memorandum be modified along the following lines: "OLC, OGC and D/Pers believe that any proposal including provision for expansion of retirement or paid benefits for Federal employees must be considered in the context of the following current factors:" Then, following your listing of several relevant factors, I would continue the paragraph as follows: "Moreover, although it was not a part of the rationale for the passage of our present CIARDS legislation, the Congress might well regard the flat 2 percent per year formula for creditable service under CIARDS as being compensation, at least in part, for any putative difficulty which CIARDS retirees might encounter in seeking outside employment. In sum, all of these factors indicate that any proposal which would have the effect of "liberalizing" benefits for CIA personnel could be expected to encounter some degree of general opposition, regardless of the merits of such a proposal."

3. Following the above recommended changes to the first full paragraph on page 2 of your memorandum, I would suggest a second full paragraph along the following lines: "The Office of Legislative Counsel, however, has received some preliminary and informal indications from our oversight committees, in the context of the recent DDO reductions, that the committees would be sympathetic to some form of legislative relief for former Agency

personnel who, because of the circumstances of their Agency employment, are at a disadvantage in seeking new employment. Such a proposal, which has been studied also by the Director of Personnel, has been incorporated in the Agency's detailed position paper on the charter legislation, as a recommended additional provision in the CIA title. Attached for your information is language which OLC has drafted and which we are considering as such a proposal; OLC also is studying other methods of obtaining enactment of such a proposal."

4. Next, I would include a paragraph along the following lines: "Any discussion of or proposal concerning retirement or paid benefits for Agency employees should be considered also in the context of the annuity received by CIARDS and Civil Service retirees. Under Federal tax law, such annuity is tax free for as long as the amounts received constitute recovery of the contributions paid into the retirement fund during the years of employment; this usually takes from 16 to 18 months and generally would cover the period in which a retiree would be seeking reemployment. Thus, even without additional pay or benefits, an Agency retiree enjoys a significant tax break during the initial post-employment period. (Persons whose employment is terminated before they are eligible for an immediate annuity may receive a separation allowance.)"

5. With the above additional information contained in your section 2, the section on "Staff Position" should be drafted along the following lines: "3. Staff Position: In view of the above considerations, we believe the preferable alternative is to continue to pursue enactment of legislation that would allow for the provision of special additional training for Agency employees after their employment with the Agency has ceased. Such a "training benefit" coupled with existing annuity benefits, would seem to address the concern expressed in your suggestion that we study the applicability of the Israeli retirement provision to Agency employees. Moreover, this approach, again in our view, would receive a more sympathetic congressional audience than would a proposal which could be construed as granting extensive and liberalized retirement and pay benefits to intelligence employees; the "training benefit" also is more specifically tailored to CIA needs and circumstances and therefore would be easier to justify in terms of not having to apply it to other categories of Federal employees."

6. In keeping with the above considerations, I would recommend finally that your "recommendation" paragraph be cast in a more positive light, i.e., that we pursue the matter of obtaining legislative provision for training of Agency personnel rather than special legislation to permit up to one full year of pay in addition to an employee's retirement pay.

STAT 7. One final question: would the costs of a training program such as outlined in the attached proposal, which was sent to Jack Blake through [] be "less expensive than the provision of up to a full year's salary," as stated in the last sentence of your paragraph 3?

8. Please keep us informed of this matter, and let us know if we can be of further assistance.

LS/

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Distribution:

Orig - Addressee

1 - OGC

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OLC:RLB:sm (17 Apr 78)

LEGISLATION TO PROVIDE TRAINING FOR
CERTAIN PERSONNEL SEPARATED FROM THE
CENTRAL INTELLIGENCE AGENCY BY THE
DIRECTOR OF CENTRAL INTELLIGENCE

Certain employees of the Central Intelligence Agency, because of the unique mission and requirements of the Agency, are at a serious disadvantage in seeking private employment once their careers with the Agency have ended. In many cases, these employees possess job skills which are not readily marketable outside the Agency. Other employees are in a difficult position because security considerations prohibit their presenting an accurate picture of their job experiences and capabilities. The legislation proposed below would make these employees of the Central Intelligence Agency eligible, under certain conditions, for up to the full-time equivalent of two years of training in order to make them competitive with job seekers outside the Agency. Among the conditions for eligibility are that the person's employment is terminated by the Agency for reasons, such as a reduction in force, which do not reflect unfavorably on performance and that the employee not be immediately eligible for retirement.

The Central Intelligence Agency, like the Civil Service and the military, has the authority to make separation payments to some employees. The purpose of those payments is to help the former employee relocate following termination, generally involuntary, of his career in Government or the military and to ease the transition into a new job. The purpose of the training permitted by the language proposed below is different -- to assist employees in developing a skill which will enable them to make the transition to other employment.

The proposed language is as follows:

"(a) An employee with five years of service with the Central Intelligence Agency whose employment is to be terminated, other than for cause on charges of misconduct, delinquency or inefficiency, may receive not more than the full-time equivalent of two years of training if

(1) the Director of Central Intelligence determines that the employee is at a disadvantage in finding new employment because the nature, circumstance or security requirements of the employee's service are clearly distinguishable from normal Government employment; and

(2) the employee does not qualify for immediate retirement benefits.

(b) During the period of training under this section, the employee shall be --

(1) retained at his last assigned grade and rate of pay;

(2) entitled to each increase in rate of pay provided by law or regulation; and

(3) excluded from staffing limitations otherwise applicable.

(c) The Director of Central Intelligence shall prescribe such regulations as necessary to carry out this section."

5 U.S.C. section 3381 provides a precedent for this type of payment in the case of air traffic controllers. Like the Central Intelligence Agency employees who would be covered by this proposed legislation, air traffic controllers have a job skill which is not readily marketable outside the Federal Aviation Administration. They are thus provided with training once they can no longer perform the duties of an air traffic controller.

Retirement
Branch, OP

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Request your
views, comments on
this. By telephone, if
you wish.

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[Redacted]

MEMORANDUM FOR: Director of Central Intelligence
VIA: Deputy Director of Central Intelligence
FROM: John F. Blake
Deputy Director for Administration
SUBJECT: Retirement System
REFERENCE: Your memorandum to the DDA, same subject,
dated 4 April 1978

1. Action Requested: That you approve the recommendation contained in paragraph 4.

2. Background: Your referent memorandum ^(attached) indicated that Israeli military officers, upon retirement, are given up to one year of full pay except that on obtaining employment the active duty pay is discontinued, although ^{their} retirement pay continues. You stated that we have more difficulty in getting employment quickly than do others, that with some exceptions in the military we have less transferability of talents (at least for the DDO) and thus need more opportunity to prepare for and try different jobs. You wondered if we could use the recent DDO experience as a basis for going to Congress for special legislation to permit us to do something similar.

I referred your question to the Director of Personnel asking him to study this situation in coordination with OGC and OLC. I have incorporated their views, with which I concur, in this paper.

The idea of providing a full year's salary to a retired Federal employee, in addition to the annuity, involves a legal obstacle of the highest order. In order to ensure equitable treatment for our employees we would have to try to obtain coverage for those under the Civil Service Retirement System (CSRS) as well as those under CIARDS. In the case of CSRS, this would require

discussions with officials of the Civil Service Commission to enlist their effort in making a proposal through the OMB to the Civil Service committees of the House and Senate. In the case of CIARDS we ourselves would deal directly with the OMB and our committees in the Congress.

OLC, OGC and D/Pers agree that the current Congressional climate and the Administration's stance on public benefits are not propitious for a request for any further expansion of retirement or pay benefits for Federal employees at large or for Agency employees in particular. The Administration intends to impose a cap on the Federal white collar pay raise this year; Congress is considering restrictions on eligibility for retirement benefits in the military; the need for 51 separate Federal retirement systems is being reviewed; the possibility of linking Federal retirement to the Social Security System is being studied; pointed questions have been asked by the staff and members of the Subcommittee on Legislation of the House Permanent Select Committee on Intelligence regarding CIARDS. All of these signs portend a mood that would not be receptive to a liberalization of benefits for CIA personnel no matter how valid we believe our arguments to be in favor of such special legislation. Although it was not a part of the rationale for the passage of our present CIARDS law, the Congress might well regard the flat two per cent per year formula for creditable service under CIARDS as being partly in compensation for any ^{putative} difficulty CIARDS retirees might encounter in seeking other employment.

Under Federal tax law, the annuity received by retirees (CIARDS and Civil Service) is tax-free for as long as the annuity received constitutes recovery of the contributions they paid into the Retirement Fund during the years of their employment. This usually takes about 16 to 18 months and roughly covers the period in which a retiree would be seeking re-employment.

Thus, during the period when searching for other employment, a retiree enjoys ~~something of~~ ^{significant} a tax "break."

Persons whose employment is terminated before they are eligible for immediate annuity may receive separation allowance.

3. Staff Position: In view of the above, we believe we would have little chance of receiving legislation that would authorize payment of a year's salary in addition to retirement annuity. A preferable alternative is to continue to pursue the incorporation into our charter legislation of a provision for authority to use appropriated funds to train employees being terminated for Agency convenience and who have no marketable skills. I had sent you earlier a copy of a memorandum from the Director of Personnel on that subject to let you know that we would be proposing to the staff of the Senate Select Committee on Intelligence such a modification of Senate bill S.2525. We believe that the staff and committee members of the SSCI might be willing to consider this proposal. There is precedent for such authority in the Federal Government, and we believe such proposal would avoid the negative reactions that we would undoubtedly encounter with a separate bill for special legislation. Also, training costs would be less expensive than the provision of up to a full year's salary and would accomplish much the same objective.

4. Recommendation: That we not pursue further the matter of special legislation to permit up to one year of full pay, in addition to retirement pay, for employees who are terminated for the convenience of the Agency.

John F. Blake

APPROVED:

Director of Central Intelligence

Date

DISAPPROVED:

Director of Central Intelligence

Date

DATA REPLY
78-1418

Executive Registry
78-5126

4 APR 1978



1444

MEMORANDUM FOR: Deputy Director for Administration
FROM: Director of Central Intelligence
SUBJECT: Retirement System

1. In Tel Aviv I happened to hear something about the military retirement system in Israel that I think would be of interest to us. An Israeli officer, upon retirement, is given up to one year of full pay except that whenever he obtains employment his military pay is discontinued. In short, he can work but not for pay, but once he settles on a job and decides to accept the pay, he must forego his active duty pay and accept only the retirement pay.

2. It seems to me this has great merit for our people, even more so than for any military group. We have more difficulty in getting employment quickly than do others. With some exceptions in the military, we have less transferability of talents (from the DDO at least) and therefore need more opportunity to prepare and try different jobs.

3. I wonder if we could use the recent DDO experience as a basis for going to the Congress for special legislation to permit us to do something like this.

 
STANSFIELD TURNER

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